

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 4:18-CR-00011
)	
MARCUS JAY DAVIS, et al)	
)	

**UNITED STATES' MOTION *IN LIMINE*
TO ADD PREVIOUSLY DISCLOSED POWERPOINT SLIDES AND
HIGHER QUALITY PHOTOGRAPH AS EXHIBITS**

The United States of America respectfully moves the Court for permission to add two exhibits to its list of exhibits at trial in this case. First, the government seeks to add a set of twelve (12) PowerPoint slides which Firearms Expert Wendy Gibson will use during her testimony. Ms. Gibson will use the slides to explain to the jury the parts and operation of a firearm, the parts of a cartridge casing, and commonly used terminology in the field of Firearms and Toolmark examination. Second, the government seeks to add a new exhibit identical to current Government Exhibit 255 (Firearm's Expert Scott McVeigh's cartridge comparison photo) except that the new exhibit is of higher resolution and therefore better quality. As grounds for this Motion, the United States asserts the following:

1. Pursuant to the Court's scheduling order, the United States disclosed its trial exhibits and corresponding exhibit list to the defendants on June 13-14, 2019, respectively, along with its list of trial witnesses. ECF No. 364.
2. On its exhibit list, the United States included a set of PowerPoint slides prepared by Forensic Scientist Gibson for use at trial. See Govt. Exhibit 324.

3. On September 3-4, 2019, the Court conducted a *Daubert* hearing during which Ms. Gibson testified using a slightly modified version of the slides originally produced in Govt. Exhibit 324.

4. After the *Daubert* hearing, the Court issued a Memorandum Opinion and Order which would make some of the original slides inadmissible in light of their content. ECF 737 and 738, respectively)

5. Accordingly, the United States asks the Court to permit the addition of twelve (12) PowerPoint slides, all of which were used at the *Daubert* hearing, for use by Wendy Gibson during the course of her testimony to educate the jury on firearms, ballistics and common terminology in the field of Firearms and Toolmark analysis. Each slide is void of any content that would run afoul of the Court's post-*Daubert* ruling.

6. The proposed replacement photo for current government Exhibit 255 is simply a higher quality version of the original photograph.

7. The addition of these two exhibit after the trial exhibit deadline does not prejudice the defendants as the defendants have had these slides since the *Daubert* Hearing and, in fact, had an opportunity to cross-examine Ms. Gibson and Mr. McVeigh on these exhibits during the course of that hearing.

WHEREFORE, the United States respectfully requests the addition of one item to its exhibit list for trial.

Respectfully submitted,

THOMAS T. CULLEN
UNITED STATES ATTORNEY

/s/Ronald M. Huber

Heather L. Carlton
Ronald M. Huber
Assistant United States Attorneys

Michael J. Newman
Special Assistant United States Attorney
United States Attorney's Office
255 West Main Street
Charlottesville, Virginia 22902
Tel: (434) 293-4283
Fax: (434) 293-4910
heather.carlton@usdoj.gov
ron.huber@usdoj.gov
newmamj@danvilleva.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice has been provided via electronic means via the Court's CM/ECF filing system to counsel of record, this 4th day of October, 2019.

/s/Ronald M. Huber
Assistant United States Attorney